

James Breitenbucher, WSBA #27670
FOX ROTHSCHILD LLP
1001 Fourth Avenue, Suite 4400
Seattle, Washington 98154
206.624.3600

Honorable Thomas O. Rice

Kelly Konkright, WSBA #33544
LUKINS & ANNIS, P.S.
717 West Sprague Avenue, Suite 1600
Spokane, Washington 99201
509.455.9555

Cali R. Spota (admitted *pro hac vice*)
FOX ROTHSCHILD LLP
997 Lenox Drive
Lawrenceville, New Jersey 08648
609.896.3600

*Attorneys for Defendant/Counterclaimant/
Third-Party Plaintiff Projekt Bayern Association*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

CITY OF LEAVENWORTH,
a Washington municipal corporation,

Plaintiff/Counterclaim
Defendant,

v.
PROJEKT BAYERN ASSOCIATION,
a Washington nonprofit corporation,

Defendant/Counterclaimant.

No. 2:22-cv-00174-TOR

**DEFENDANT /
COUNTERCLAIMANT /
THIRD-PARTY PLAINTIFF
PROJEKT BAYERN
ASSOCIATION'S SECOND
AMENDED COUNTERCLAIMS
AND FIRST AMENDED THIRD-
PARTY COMPLAINT**

JURY TRIAL DEMANDED

PROJEKT BAYERN ASSOCIATION,
a Washington nonprofit corporation,

Third-Party Plaintiff,

v.
LEAVENWORTH CHAMBER OF
COMMERCE, a Washington nonprofit
corporation,

Third-Party Defendant.

AMENDED COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

1
2 1. Projekt Bayern Association (“Projekt Bayern”), for its Counterclaim
3 and Counterclaim Complaint against The City of Leavenworth (the “City”) and the
4 Leavenworth Chamber of Commerce (the “Chamber”) respectively, states as
5 follows.

6 **I. PARTIES, JURISDICTION, AND VENUE**

7 2. Counterclaim Defendant City of Leavenworth is a Washington
8 municipal corporation located in Chelan County, Washington.

9 3. Third-Party Defendant the Leavenworth Chamber of Commerce is a
10 Washington nonprofit corporation with its principal place of business at 940 U.S.-2,
11 Suite B, Chelan County, Leavenworth, Washington.

12 4. Counterclaimant Projekt Bayern Association is a Washington nonprofit
13 corporation with its principal place of business at 10402 Chumstick Highway,
14 Leavenworth, Chelan County, Washington.

15 5. This civil action arises under the Lanham Trademark Act, 15 U.S.C. §
16 1125(a) and violations of Washington law. This Court has original subject matter
17 jurisdiction over this action pursuant to 28 U.S.C. § 1331, 1338(a)-(b) and 15 U.S.C.
18 § 1121, and supplemental jurisdiction over causes of action based on state law,
19 pursuant to 28 U.S.C. § 1367.

20 6. Jurisdiction is proper as to Counterclaim Defendant City of
21 Leavenworth and Third-Party Defendant the Leavenworth Chamber of Commerce
22 because both are Washington state corporations with their offices and principal
23 places of business in the State of Washington. Both the City and the Chamber’s
24 wrongful acts occurred within the State of Washington.

25 7. Venue is proper in this district under 28 U.S.C. § 1391 because the
26 Chamber transacts business in this district, a substantial part of the events giving rise

1 to Counterclaimant's claims arose in this district, and the effects of the Chamber's
2 and the City's unlawful actions are felt in this district. Further, the City originally
3 brought this case in this district.

4 II. STATEMENT OF ADDITIONAL FACTS

5 8. Projekt Bayern has been rendering, among other things, entertainment
6 services in the nature of organizing and conducting cultural festivals featuring food,
7 beverages, alcohol, live musical performances, and entertainment for children and
8 adults (the "Projekt Bayern Services") in connection with the trademark
9 LEAVENWORTH OKTOBERFEST (the "LEAVENWORTH OKTOBERFEST"
10 Mark) since August 1998.

11 9. Projekt Bayern is the owner of U.S. Trademark Registration No.
12 5,239,374 for the LEAVENWORTH OKTOBERFEST Mark (the
13 "LEAVENWORTH OKTOBERFEST Registration").

14 10. The LEAVENWORTH OKTOBERFEST Registration was placed on
15 the Principal Register of the United States Patent and Trademark office on July 11,
16 2017.

17 11. The LEAVENWORTH OKTOBERFEST Registration provides
18 conclusive evidence of Projekt Bayern's exclusive right to use its LEAVENWORTH
19 OKTOBERFEST Mark in commerce pursuant to 15 U.S.C. § 1115(b), and it also
20 provides nationwide constructive notice of Projekt Bayern's exclusive rights
21 pursuant to 15 U.S.C. § 1072.

22 12. Projekt Bayern has enjoyed continuous and exclusive use of its
23 LEAVENWORTH OKTOBERFEST Mark for its services since August 1998,
24 including the yearly production of its LEAVENWORTH OKTOBERFEST event.

25 13. Projekt Bayern has heavily invested in the advertisement and offering
26 of its Projekt Bayern Services. In fact, Projekt Bayern has invested hundreds of

1 thousands of dollars in building its LEAVENWORTH OKTOBERFEST brand
2 connected with its Projekt Bayern Services.

3 14. Projekt Bayern has also donated more than \$500,000 to improve the
4 City of Leavenworth, enhance the Bavarian theme, and help build the goodwill
5 associated with its LEAVENWORTH OKTOBERFEST Mark and the Projekt
6 Bayern Services, including a complete restoration of the iconic Gazebo in Front
7 Street Park.

8 15. Based on the continuous and exclusive use of the LEAVENWORTH
9 OKTOBERFEST Mark, and because of the extensive advertising, promotion, and
10 offering of services under the LEAVENWORTH OKTOBERFEST Mark, the
11 LEAVENWORTH OKTOBERFEST Mark has become distinctive of the Projekt
12 Bayern Services in the minds of the consuming public. In fact, people travel across
13 the country yearly to participate in Projekt Bayern's LEAVENWORTH
14 OKTOBERFEST branded events. The public recognizes the LEAVENWORTH
15 OKTOBERFEST Mark as representing the quality and value of the Projekt Bayern
16 Services, identifying the Projekt Bayern Services as coming from a single source,
17 and distinguishing the Projekt Bayern Services from services provided by other
18 sources.

19 **The City of Leavenworth and the Leavenworth Chamber of Commerce's**
20 **Directly Competing and Purposely Confusingly Similar Event**

21 16. Since 1998, Projekt Bayern operated its LEAVENWORTH
22 OKTOBERFEST festival in the City of Leavenworth.

23 17. On September 26, 2012, the City of Leavenworth and Projekt Bayern
24 entered into a lease agreement, under which Projekt Bayern would lease space for
25 its Projekt Bayern Services, which included the LEAVENWORTH
26 OKTOBERFEST event.

1 18. Under the 2012 Agreement, Projekt Bayern agreed to donate to the City
2 of Leavenworth \$50,000 annually during the term of the 2012 Agreement. The
3 original term of the 2012 Agreement was five years, with the possibility of automatic
4 renewal after the first five-year period.

5 19. The 2012 Agreement makes no reference to ownership of Intellectual
6 Property rights or any licenses relating to same. Instead, Paragraph III.A. of the 2012
7 Agreement specifically identifies the LEAVENWORTH OKTOBERFEST event as
8 belonging to Projekt Bayern by stating: “In exchange for the Annual
9 Donation/Compensation Payment, Projekt Bayern will have full use of the Fruit
10 Warehouse for its Oktoberfest Festival and related activities...” Exh. B at p. 4
11 (emphasis added).

12 20. There is nothing in the 2012 Agreement that suggests the City of
13 Leavenworth owns the LEAVENWORTH OKTOBERFEST event or
14 LEAVENWORTH OKTOBERFEST Mark. Instead, the 2012 Agreement simply
15 grants Projekt Bayern a right to use the property for “its” LEAVENWORTH
16 OKTOBERFEST event.

17 21. The City of Leavenworth and Projekt Bayern had a cordial business
18 relationship for many years. In fact, Projekt Bayern donated more than \$500,000 to
19 improve the City of Leavenworth and enhance the Bavarian theme.

20 22. The 2012 Agreement was renewed in 2017. Projekt Bayern continued
21 to offer its LEAVENWORTH OKTOBERFEST event in Leavenworth until 2020.

22 23. Due to the global coronavirus pandemic and the restrictions put in place
23 by the City of Leavenworth to limit the spread of the virus, Projekt Bayern could not
24 operate its LEAVENWORTH OKTOBERFEST event in Leavenworth in 2020 or
25 2021. In 2021, Projekt Bayern organized a free, street fair, or harvest festival in
26 Leavenworth.

1 24. The City of Leavenworth terminated the 2012 Agreement with Projekt
2 Bayern by letter dated March 23, 2021.

3 25. In a June 3, 2022 Press Release, the City of Leavenworth announced:
4 “Historically, October has been reserved for Oktoberfest. The City is seeking a new
5 style of partnership with an entity that will conceptualize, plan, prepare, execute,
6 evaluate and replicate a marquee event to promote the City, showcase local
7 businesses, respect community character, celebrate inclusion, and balance the needs
8 of visitors and residents in October.” (Emphasis added.)

9 26. When Projekt Bayern submitted a proposal to operate its
10 LEAVENWORTH OKTOBERFEST event in 2022, the City of Leavenworth did
11 not seriously consider Projekt Bayern’s proposal, rejecting Projekt Bayern’s final
12 proposal on the same day that it was made.

13 27. Projekt Bayern reserved Leavenworth Festhalle for its
14 LEAVENWORTH OKTOBERFEST event in 2022. Under Leavenworth Festhalle’s
15 published policies and procedures, the Leavenworth Festhalle allowed groups to
16 lease the facility for the same period that they had in the prior year. The City directed
17 the Leavenworth Festhalle’s staff to cancel Projekt Bayern’s reservations for 2022
18 in violation of Leavenworth Festhalle’s published policies and procedures.

19 28. Wanting to continue offering the Projekt Bayern Services, including the
20 LEAVENWORTH OKTOBERFEST event, in the same manner that consumers
21 were accustomed to and have come to associate the LEAVENWORTH
22 OKTOBERFEST event with, Projekt Bayern made the decision to move its event to
23 Wenatchee, Washington, a city from which it has operated shuttle buses to and from
24 its LEAVENWORTH OKTOBERFEST event for many years.

25 29. In Wenatchee, Projekt Bayern will continue to operate the
26 LEAVENWORTH OKTOBERFEST event with the same traditions and offerings,

1 including musicians and vendors Projekt Bayern hired in previous
2 LEAVENWORTH OKTOBERFEST events. Projekt Bayern is also marketing the
3 LEAVENWORTH OKTOBERFEST event in Wenatchee to the same prospective
4 visitors as previous LEAVENWORTH OKTOBERFEST events; is offering shuttle
5 bus service between Leavenworth and Wenatchee just as Projekt Bayern offered for
6 previous LEAVENWORTH OKTOBERFEST events; and will use funds from the
7 LEAVENWORTH OKTOBERFEST event in Wenatchee to promote the Old-World
8 Bavarian theme in Leavenworth and the surrounding area.

9 30. According to the City of Leavenworth's records, on August 3, 2021,
10 just twenty-two (22) seconds before the deadline, SE Productions of Seattle
11 submitted a two-page proposal for a "Leavenworth Harvest Festival / Leavenworth
12 Fall Fest / Leavenworth Fall Festival" with the following caveat: "All elements of
13 the proposed event are to be determined by a site visit and further exploratory
14 conversations with the City of Leavenworth."

15 31. On October 7, 2021, the City of Leavenworth announced, "a
16 partnership with SE Productions for the October 2022 festival and beyond in
17 Leavenworth."

18 32. After SE Productions withdrew its participation from any October 2022
19 festival, the City of Leavenworth began working with the Leavenworth Chamber of
20 Commerce with no request for proposal or bidding process.

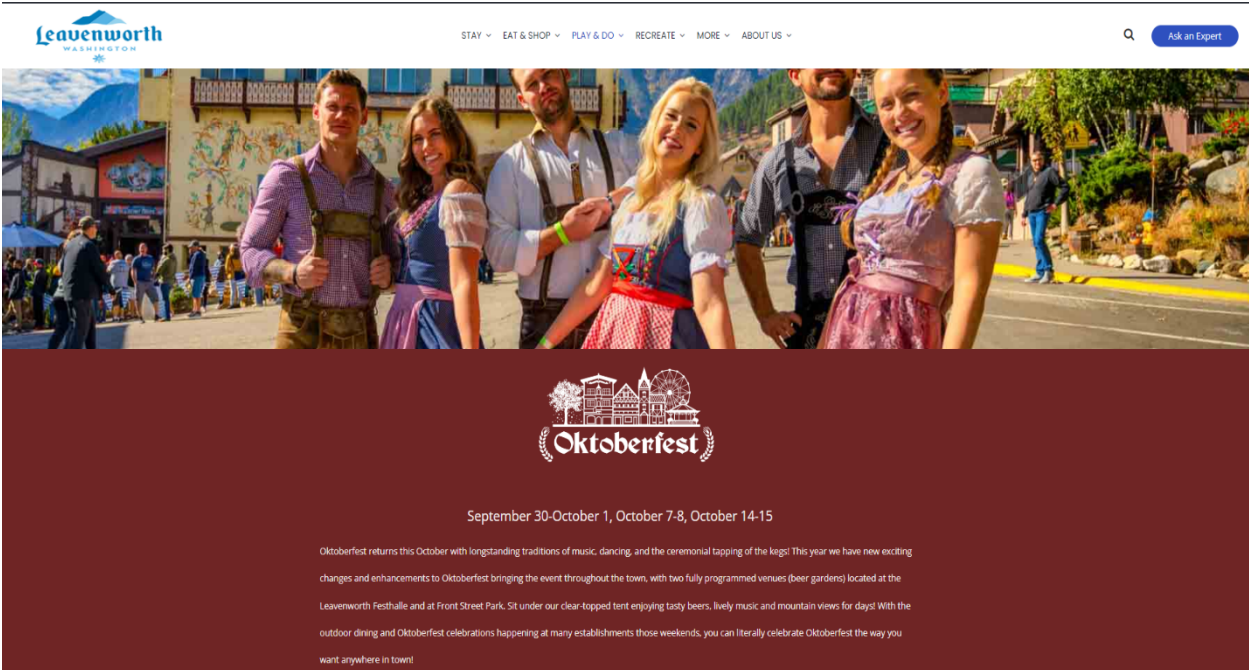
21 33. On July 11, 2022, the City of Leavenworth announced that it would
22 operate an "Oktoberfest 2022" in Leavenworth ("the 2022 Festival") to directly
23 compete with Projekt Bayern's LEAVENWORTH OKTOBERFEST event in
24 Wenatchee.

25 34. The Leavenworth Chamber of Commerce, in partnership with the City
26 of Leavenworth, provided the 2022 Festival in a geographic area that directly

overlapped with the geographic area in which Projekt Bayern provided its LEAVENWORTH OKTOBERFEST event-related services.

35. The Chamber and the City purposely traded off Projekt Bayern's investment in its LEAVENWORTH OKTOBERFEST Mark and the goodwill associated with the LEAVENWORTH OKTOBERFEST Mark and LEAVENWORTH OKTOBERFEST event by marketing the 2022 Festival as an event identical to Projekt Bayern's LEAVENWORTH OKTOBERFEST event.

36. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf of the Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's Oktoberfest, which has been the only Oktoberfest event taking place in the City of Leavenworth for the past 20 years, will be held in Leavenworth again this year. This statement is also visible on the Chamber's website for the 2022 Festival as seen below:

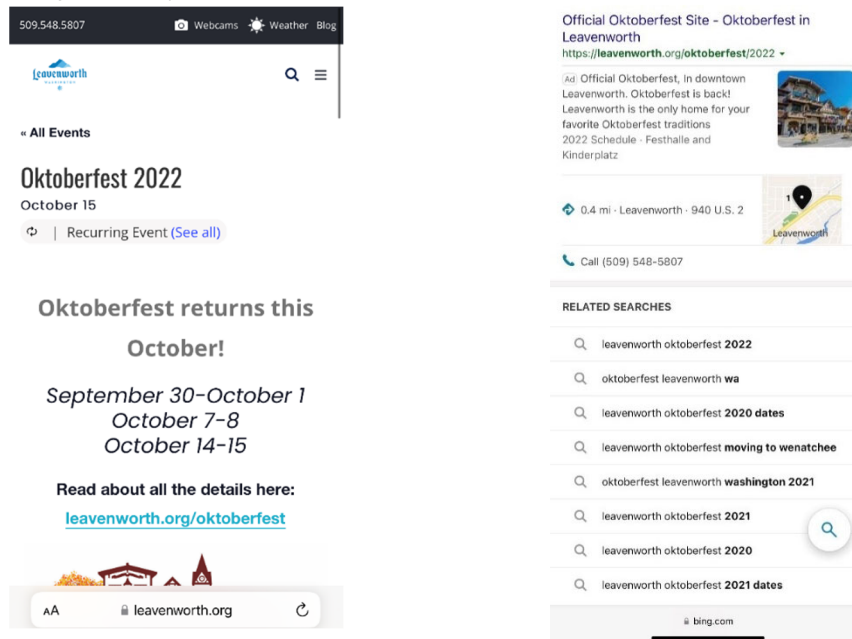


(<https://leavenworth.org/oktoberfest/>)

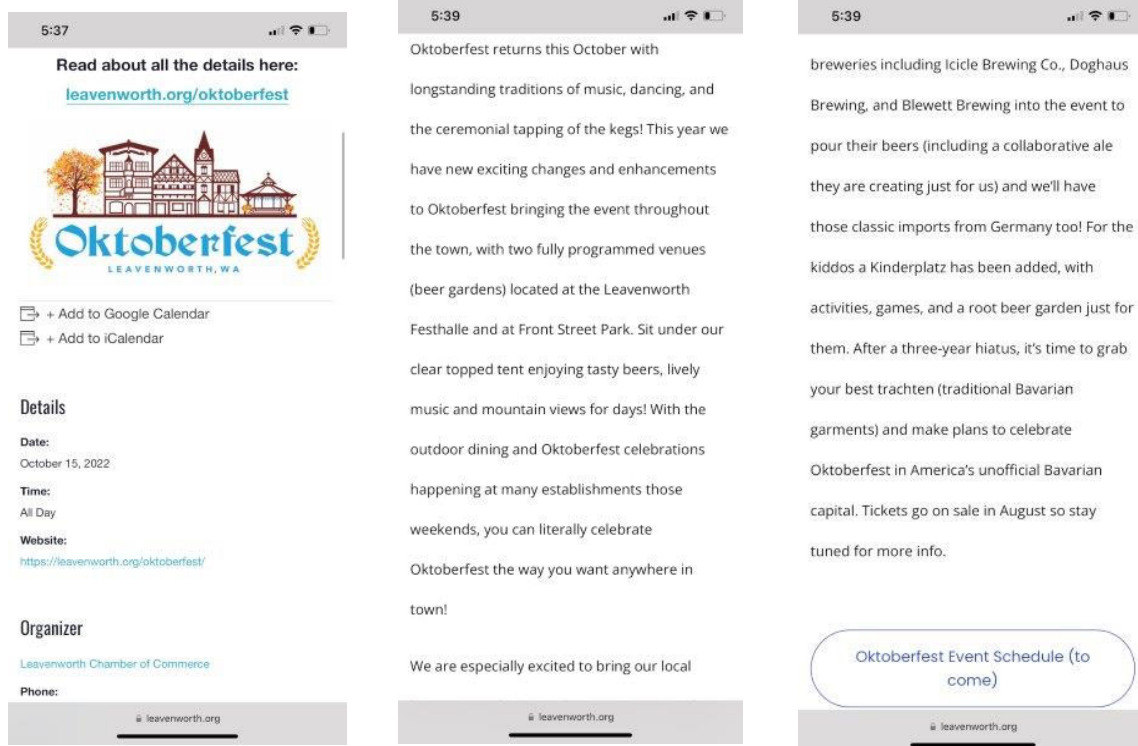
37. Projekt Bayern has provided a traditional Oktoberfest cultural festival in Leavenworth, Washington for the past 20 years, which includes, *inter alia*, traditional food, beverages, alcohol, live musical performances, and entertainment for children and adults. No other person or entity provided this Oktoberfest cultural festival in Leavenworth prior to 2022.

38. The use of the word “returns” signals to consumers that Projekt Bayern will once again be providing its LEAVENWORTH OKTOBERFEST in Leavenworth, Washington in 2022. This statement confused consumers into believing the LEAVENWORTH OKTOBERFEST event would be held in Leavenworth, Washington again in 2022 and/or there is an association between the Chamber and City’s 2022 Festival and Projekt Bayern.

39. As seen below, the phrases like “Oktoberfest returns” and “Oktoberfest is Back” are the focus of the Chamber’s marketing efforts and advertisements for the 2022 Festival, to suggest to consumers that the 2022 Festival would be the same Oktoberfest-themed event that they have come to know and enjoy for the last 20 years, i.e., Projekt Bayern’s LEAVENWORTH OKTOBERFEST:



40. Notably, in the announcement seen below, not only did the Chamber state that “Oktoberfest returns with longstanding traditions . . .” but it also mentioned a “three-year hiatus,” again insinuating that the only Oktoberfest cultural festival that consumers know, i.e., Projekt Bayern’s event, was coming back again for 2022:



41. The Chamber was aware of the goodwill and success associated with Projekt Bayern’s LEAVENWORTH OKTOBERFEST and LEAVENWORTH OKTOBERFEST Mark. It used these deceptive tactics in its marketing efforts to confuse and mislead consumers into believing its 2022 Festival for the City was somehow related to Projekt Bayern’s LEAVENWORTH OKTOBERFEST, a continuation of the same 20+ year event, and unfairly compete in the marketplace.

42. Further, in addition, the Leavenworth Chamber of Commerce promoted the 2022 Festival by advertising that it would replicate popular features used in Projekt Bayern’s LEAVENWORTH OKTOBERFEST event. As seen above, the

1 Leavenworth Chamber of Commerce's website claims "Oktoberfest returns this
2 October with longstanding traditions of music, dancing, and the ceremonial tapping
3 of the kegs!" (<https://leavenworth.org/oktoberfest/>)

4 43. In fact, the 2022 Festival included indicia that are unique to Projekt
5 Bayern's LEAVENWORTH OKTOBERFEST event and not used in the traditional
6 Oktoberfest in Germany. For example, the Oktoberfest event in Leavenworth exactly
7 replicated LEAVENWORTH OKTOBERFEST'S ticket prices and dates, which
8 dates do not overlap with the traditional Oktoberfest in Germany. Further, the 2022
9 Festival had Kinderplatz- Rootbeer floats, which was something unique to Projekt
10 Bayern's LEAVENWORTH OKTOBERFEST event. The Chamber also promised
11 in the media to continue LEAVENWORTH OKTOBERFEST's longstanding
12 tradition of having the Boy Scouts sell pretzels at the Oktoberfest event in
13 Leavenworth.

14 44. Over the past 20 years, Projekt Bayern has been providing an
15 Oktoberfest experience to consumers traveling from around the country to a specific
16 region of Central Washington. After years of providing a high quality, popular event,
17 showcasing the region and many local vendors, consumers have come to trust that
18 the LEAVENWORTH OKTOBERFEST event rendered by Projekt Bayern will be
19 the same high-quality event they have enjoyed for years.

20 45. Based on the City's and the Chamber's advertising, it is apparent that
21 the City and the Chamber tried to mimic the qualities of LEAVENWORTH
22 OKTOBERFEST that consumers have come to recognize and expect to not only
23 trade on Projekt Bayern's success, but to also confuse consumers into believing that
24 the 2022 Festival was associated with and/or sponsored by Projekt Bayern.

46. As seen below, the Chamber used the wording “#LEAVENWORTHOKTOBERFEST” to market the 2022 Festival:



The Chamber purposely used this hashtag to direct traffic towards its own advertisement for the 2022 Festival, knowing that those searching for Projekt Bayern’s event would be misdirected to this page. The use of the hashtag in its advertisement also again suggests to consumers that the 2022 Festival is associated

1 with and/or sponsored by Projekt Bayern as the hashtag is the LEAVENWORTH
2 OKTOBERFEST Mark.

3 47. The Chamber used photographs, depicting the LEAVENWORTH
4 OKTOBERFEST event rendered by Projekt Bayern, to advertise the City and the
5 Chamber's competing Oktoberfest-themed event. For example, the below, which the
6 Chamber posted, shows a picture of Projekt Bayern's LEAVENWORTH
7 OKTOBERFEST:



1 (<https://leavenworth.org/oktoberfest/>)

2 48. The above image was taken from the Chamber's website for the 2022
3 Festival. The picture displays a group of individuals who attended Projekt Bayern's
4 LEAVENWORTH OKTOBERFEST Event. In fact, this picture was taken inside
5 Projekt Bayern's tent at Projekt Bayern's LEAVENWORTH OKTOBERFEST
6 Event. The tables are on the left and the beer trailer was also in that venue, which
7 Projekt Bayern called "the Spazz Platz".

8 49. Upon information and belief, this deceptive tactic was done at the
9 City's direction and/or request. Projekt Bayern understands that the Chamber was
10 asked to help plan and run the 2022 Festival for the City. The Chamber therefore
11 had the City's permission to run the 2022 Festival. Because of this relationship, the
12 City likely had influence over, or must have approved of, the Chamber's marketing
13 efforts relating to the 2022 Festival. Thus, the City fostered or participates in the
14 Chamber's marketing efforts.

15 50. In addition, upon information and belief, the City of Leavenworth had
16 promised to subsidize the Leavenworth Chamber of Commerce to cover expenses
17 related to the 2022 Festival in Leavenworth.

18 51. The Chamber, and the City, whether jointly, as licensor-licensee, or as
19 an agent of the other, intentionally used the recognition and goodwill associated with
20 Projekt Bayern and Projekt Bayern's LEAVENWORTH OKTOBERFEST event to
21 launch its directly competing Oktoberfest event. Consumers saw pictures like the
22 example provided above, which depicts the festival they have long recognized as
23 originating with Projekt Bayern, and immediately assumed the 2022 Festival was
24 (1) being provided again by Projekt Bayern; and/or (2) associated with / sponsored
25 by Projekt Bayern. The use of pictures depicting LEAVENWORTH
26 OKTOBERFEST therefore helped cause additional consumer confusion.

1 52. The City and the Chamber were aware or should have been aware that
2 the consuming public recognized and relied on the LEAVENWORTH
3 OKTOBERFEST Mark and LEAVENWORTH OKTOBERFEST event to identify
4 the Projekt Bayern Services and to distinguish the Projekt Bayern Services from the
5 services of others.

6 53. The City and the Chamber were aware or should have been aware that
7 their use of the words “return” and “back,” the phrase “LEAVENWORTH
8 OKTOBERFEST” in a hashtag, and pictures depicting the Projekt Bayern Services
9 in its marketing materials was likely to confuse, mislead, and otherwise deceive
10 consumers into believing the 2022 Festival originated from, was affiliated with,
11 and/or was licensed, sponsored, approved, or authorized by Projekt Bayern.

12 54. Further, the City and the Chamber were aware or should have been
13 aware that the mimicking of the Projekt Bayern Services offered in connection with
14 the LEAVENWORTH OKTOBERFEST Mark in the offering of the 2022 Festival
15 was likely to confuse, mislead, and otherwise deceive consumers into believing the
16 2022 Festival originated from, was affiliated with, and/or was licensed, sponsored,
17 approved, or authorized by Projekt Bayern.

18 55. The City and the Chamber’s deceptive marketing and advertising and
19 direct copying of the Projekt Bayern Services, including the use of phrases like
20 “Oktoberfest returns” and “Oktoberfest is Back,” the use of the phrase
21 “LEAVENWORTH OKTOBERFEST” in a hashtag, and pictures of the Projekt
22 Bayern Services, in connection with the production of a separate, directly competing
23 festival, has caused actual confusion and is likely to cause additional confusion or to
24 cause a mistake or to deceive as to affiliation, connection, or association between
25 the City and the Chamber and Projekt Bayern.

26 56. By the aforementioned acts, the City and the Chamber have exploited

1 and sought to trade upon the reputation and goodwill developed by Projekt Bayern
2 in connection with its LEAVENWORTH OKTOBERFEST Mark and the Projekt
3 Bayern Services.

4 57. Upon information and belief, the City and Chamber's acts were
5 committed with the reckless disregard of Projekt Bayern's rights and the likelihood
6 that consumers would be confused and falsely believe that the 2022 Festival was
7 provided by, licensed by, sponsored by, endorsed by, or otherwise affiliated with
8 Projekt Bayern.

9 58. The City and the Chamber's acts induced consumers to believe that
10 Projekt Bayern was offering its LEAVENWORTH OKTOBERFEST event in
11 Leavenworth, or at least believe that 2022 Festival was licensed by, sponsored by,
12 endorsed by, or otherwise affiliated with Projekt Bayern. The City and the
13 Chamber's acts induced consumers to attend the 2022 Festival in the mistaken belief
14 that the City and the Chamber have affiliated with the Projekt Bayern Services and
15 expected the same level of quality and service.

16 59. In fact, Projekt Bayern received inquiries from consumers and third
17 parties as to whether Projekt Bayern was offering or was otherwise associated with
18 the 2022 Festival. Projekt Bayern has also received communications from
19 consumers who planned to travel to the 2022 Festival, assuming that Projekt Bayern
20 was providing its LEAVENWORTH OKTOBERFEST event with the City of
21 Leavenworth.

22 60. As a result of the City and the Chamber's conduct, Projekt Bayern has
23 suffered and, unless enjoined by this Court, will continue to suffer damages to its
24 business, reputation, and goodwill.

25 61. The wrongful activities and unfair competition of the City and the
26 Chamber are wanton, willful, and deliberate.

62. On April 27, 2022, Projekt Bayern, through legal counsel, wrote the City of Leavenworth to remind the City and its mayor that Projekt Bayern owns the LEAVENWORTH OKTOBERFEST Mark and demanding that the City of Leavenworth refrain from using the LEAVENWORTH OKTOBERFEST Mark or any confusing similar marks.

63. The City of Leavenworth responded to this April 27, 2022 letter by filing this lawsuit and initiating a proceeding before United States Patent and Trademark Office's Trademark Trial and Appeal Board, seeking to cancel Projekt Bayern's LEAVENWORTH OKTOBERFEST Mark.

64. The City moved to dismiss Projekt Bayern's Counterclaims on August 31, 2022. Dkt. No. 14 ("Motion to the Dismiss"). The Motion to Dismiss states that the Chamber is responsible for the deceptive advertising practices mentioned in Projekt Bayern's Counterclaims. *See* Motion to Dismiss at pp. 5-6.

65. Projekt Bayern completed a Claim for Damages Form that was submitted to the Leavenworth's City Clerk/Treasurer via email on October 4, 2022 with a physical copy delivered to the City of Leavenworth by overnight mail on October 5, 2022.

COUNT I

FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION, AND

UNFAIR COMPETITION UNDER 15 U.S.C. §1125(a)

(Against the City of Leavenworth)

1. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

2. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the LEAVENWORTH OKTOBERFEST mark/name in connection with the offering

1 and rendering of entertainment services in the nature of organizing and conducting
2 cultural festivals featuring food, beverages, alcohol, live musical performances, and
3 entertainment for children and adults.

4 3. As result of longstanding and extensive use of the LEAVENWORTH
5 OKTOBERFEST trademark and wide recognition among attendees of its
6 Oktoberfest celebrations, Projekt Bayern's LEAVENWORTH OKTOBERFEST
7 Mark has become distinctive and an indication of the source of such festivities.

8 4. Because of the highly entertaining and superb quality service Projekt
9 Bayern provides to those attending its Oktoberfest event year after year, consumers
10 have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt
11 Bayern.

12 5. As described above, the City knowingly and willfully misled and
13 deceived consumers into believing that the 2022 Festival, held in Leavenworth, had
14 an affiliation, connection, or association with Projekt Bayern, or that the 2022
15 Festival was approved or sponsored by Projekt Bayern.

16 6. The City's actions described above, including falsely and misleadingly
17 describing or representing in commercial advertising and promotion of the City's
18 services as that of Projekt Bayern's, either directly or through the Chamber as its
19 agent, misrepresented the nature, characteristics, and qualities of the City's services.

20 7. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
21 of Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
22 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
23 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
24 event taking place in the City of Leavenworth for the past 20 years, will be held in
25 Leavenworth again this year.

1 8. An advertisement for the 2022 Festival also stated that “Oktoberfest is
2 back,” again, suggesting to consumers that Projekt Bayern’s LEAVENWORTH
3 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
4 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
5 year.

6 9. Because of the partnership created between the City and the Chamber,
7 said statement was either (1) made at the City’s direction or (2) approved by the
8 City.

9 10. Furthermore, the City either instructed or approved others to use
10 photographs, depicting the LEAVENWORTH OKTOBERFEST event rendered by
11 Projekt Bayern, to advertise the City and the Chamber’s directly competing festival.
12 The City intentionally used the recognition and goodwill associated with Projekt
13 Bayern and the Projekt Bayern Services, specifically its LEAVENWORTH
14 OKTOBERFEST event, to launch its directly competing festival.

15 11. The City’s deceptive marketing and advertising, through the Chamber,
16 including the use of phrases like “Oktoberfest returns” and “Oktoberfest is Back,”
17 the use of the phrase “LEAVENWORTH OKTOBERFEST” in a hashtag, displaying
18 pictures of Projekt Bayern Services, and the mimicking of the Projekt Bayern
19 Services offered in connection with the LEAVENWORTH OKTOBERFEST Mark
20 in the offering of the 2022 Festival, has caused actual confusion and is likely to cause
21 additional confusion or to cause a mistake or to deceive as to affiliation, connection,
22 or association between the City and Projekt Bayern and constitutes false designation
23 of origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

24 12. The City’s acts were without license from or permission of Projekt
25 Bayern.

14. As a direct consequence of City's unlawful acts and practices, Projekt Bayern has suffered, will continue to suffer, and/or is likely to suffer damage to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

15. By reason of the City's unlawful acts and practices, the City has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

15. By reason of the City's unlawful acts and practices, the City has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

COUNT II

**FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION, AND
UNFAIR COMPETITION UNDER 15 U.S.C. §1125(a)**

(Against the Leavenworth Chamber of Commerce)

16. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

17. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the LEAVENWORTH OKTOBERFEST mark/name in connection with the offering and rendering of entertainment services in the nature of organizing and conducting cultural festivals featuring food, beverages, alcohol, live musical performances, and entertainment for children and adults.

18. As result of longstanding and extensive use of the LEAVENWORTH OKTOBERFEST trademark and wide recognition among attendees of its Oktoberfest celebrations, Projekt Bayern's LEAVENWORTH OKTOBERFEST Mark has become distinctive and an indication of the source of such festivities.

1 19. Because of the highly entertaining and superb quality service Projekt
2 Bayern provides to those attending its Oktoberfest event year after year, consumers
3 have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt
4 Bayern.

5 20. As described above, the Chamber knowingly and willfully misled and
6 deceived consumers into believing that the 2022 Festival, held in Leavenworth, had
7 an affiliation, connection, or association with Projekt Bayern, or that the 2022
8 Festival was approved or sponsored by Projekt Bayern.

9 21. The Chamber's actions described above, including falsely and
10 misleadingly describing or representing in commercial advertising and promotion of
11 the Chamber's services as that of Projekt Bayern's, either directly or through acting
12 as an agent for the City, misrepresented the nature, characteristics, and qualities of
13 the Chamber's services.

14 22. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
15 of Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
16 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
17 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
18 event taking place in the City of Leavenworth for the past 20 years, will be held in
19 Leavenworth again this year.

20 23. An advertisement for the 2022 Festival also stated that "Oktoberfest is
21 back," again, suggesting to consumers that Projekt Bayern's LEAVENWORTH
22 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
23 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
24 year.

25 24. Furthermore, the Chamber used photographs, depicting the
26 LEAVENWORTH OKTOBERFEST event rendered by Projekt Bayern, to advertise

1 the City and the Chamber's directly competing festival. The Chamber intentionally
2 used the recognition and goodwill associated with Projekt Bayern and the Projekt
3 Bayern Services, specifically its LEAVENWORTH OKTOBERFEST event, to
4 launch its directly competing festival.

5 25. The Chamber's deceptive marketing and advertising, including the use
6 of phrases like "Oktoberfest returns" and "Oktoberfest is Back," the use of the phrase
7 "LEAVENWORTH OKTOBERFEST" in a hashtag, displaying pictures of Projekt
8 Bayern Services, and the mimicking of the Projekt Bayern Services offered in
9 connection with the LEAVENWORTH OKTOBERFEST Mark in the offering of
10 the 2022 Festival, has caused actual confusion and is likely to cause additional
11 confusion or to cause a mistake or to deceive as to affiliation, connection, or
12 association between the City and Projekt Bayern and constitutes false designation of
13 origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

14 26. The Chamber's acts were without license from or permission of Projekt
15 Bayern.

16 27. The aforesaid acts constitute federal unfair competition in violation of
17 § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

18 28. As a direct consequence of City's unlawful acts and practices, Projekt
19 Bayern has suffered, will continue to suffer, and/or is likely to suffer damage to its
20 business reputation and goodwill, for which Projekt Bayern is entitled to relief.

21 29. By reason of the Chamber's unlawful acts and practices, the Chamber
22 has caused, is causing and, unless such acts are enjoined by the Court, will continue
23 to cause irreparable harm to Projekt Bayern for which there is no adequate remedy
24 at law and for which Projekt Bayern is entitled to injunctive relief.

25 **COUNT III**

26 **COMMON LAW UNFAIR COMPETITION**

(as to the City of Leavenworth)

30. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

31. This cause of action arises under the Common Law of Unfair Competition over which this Court has jurisdiction by virtue of 28 U.S.C. § 1338 and § 1367 and by the principles of supplemental jurisdiction.

32. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the LEAVENWORTH OKTOBERFEST mark/name in connection with the offering and rendering of entertainment services in the nature of organizing and conducting cultural festivals featuring food, beverages, alcohol, live musical performances, and entertainment for children and adults.

33. Because of the highly entertaining and superb quality service Projekt Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event year after year, consumers have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt Bayern.

34. Projekt Bayern possesses common law rights in its LEAVENWORTH OKTOBERFEST Mark, which is uniquely associated with Projekt Bayern as to the source of the goods and services offered in connection with the LEAVENWORTH OKTOBERFEST Mark.

35. As discussed above, the City made, directed, or specifically approved others to issue false and misleading representations to Projekt Bayern's current and prospective customers through the Chamber. The City's conduct constitutes unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade in violation of Washington common law of unfair competition.

36. As a direct consequence of the City's unlawful acts and practices, Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

37. By reason of the City's unlawful acts and practices, the City has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

COUNT IV

COMMON LAW UNFAIR COMPETITION

(as to the Leavenworth Chamber of Commerce)

38. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

39. This cause of action arises under the Common Law of Unfair Competition over which this Court has jurisdiction by virtue of 28 U.S.C. § 1338 and § 1367 and by the principles of supplemental jurisdiction.

40. Projekt Bayern is the owner of U.S. Registration No. 5,239,374 for the mark LEAVENWORTH OKTOBERFEST. Projekt Bayern is the prior user of the LEAVENWORTH OKTOBERFEST mark/name in connection with the offering and rendering of entertainment services in the nature of organizing and conducting cultural festivals featuring food, beverages, alcohol, live musical performances, and entertainment for children and adults.

41. Because of the highly entertaining and superb quality service Projekt Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event year after year, consumers have come to associate the LEAVENWORTH OKTOBERFEST event with Projekt Bayern.

42. Projekt Bayern possesses common law rights in its LEAVENWORTH OKTOBERFEST Mark, which is uniquely associated with Projekt Bayern as to the source of the goods and services offered in connection with the LEAVENWORTH OKTOBERFEST Mark.

43. As discussed above, the Chamber made false and misleading representations to Projekt Bayern's current and prospective customers. The Chamber's conduct constitutes unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade in violation of Washington common law of unfair competition.

44. As a direct consequence of the Chamber's unlawful acts and practices, Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

45. Because of the Chamber's unlawful acts and practices, the Chamber has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

COUNT V

VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

(As to the City of Leavenworth)

46. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

47. As result of its longstanding position as the exclusive provider of an Oktoberfest celebration in Leavenworth, Projekt Bayern has acquired wide recognition among attendees of cultural festivals.

48. Because of the highly entertaining and superb quality service Projekt Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event

1 year after year, consumers have come to associate the LEAVENWORTH
2 OKTOBERFEST event with Projekt Bayern.

3 49. As described above, the City knowingly and willfully misled and
4 deceived consumers into believing that the 2022 Festival held in Leavenworth in
5 2022 had an affiliation, connection, or association with Projekt Bayern, or that the
6 2022 Festival was approved or sponsored by Projekt Bayern, either directly or
7 through the Chamber.

8 50. The City's actions described above, including falsely and misleadingly
9 describing or representing in commercial advertising and promotion of the City's
10 services as that of Projekt Bayern's, misrepresented the nature, characteristics, and
11 qualities of the City's services, either directly or through the Chamber.

12 51. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
13 of Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
14 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
15 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
16 event taking place in the City of Leavenworth for the past 20 years, will be held in
17 Leavenworth again this year.

18 52. An advertisement for the 2022 Festival also stated that "Oktoberfest is
19 back," again, suggesting to consumers that Projekt Bayern's LEAVENWORTH
20 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
21 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
22 year.

23 53. Because of the partnership created between the City and the Chamber,
24 said statement was either (1) made at the City's direction or (2) approved by the
25 City.

54. Furthermore, the City either instructed or approved others to use photographs, depicting the LEAVENWORTH OKTOBERFEST event rendered by Projekt Bayern, to advertise the City and the Chamber's directly competing festival. The City intentionally used the recognition and goodwill associated with Projekt Bayern and the Projekt Bayern Services, specifically its LEAVENWORTH OKTOBERFEST event, to launch its directly competing festival.

55. The City's actions constitute unfair and deceptive practices in commerce under Washington law.

56. The City's actions have and continue to negatively affect the public interest as consumers traveling from all around the United States were deceived into attending an event, of which they believed originated from, or was associated with, Projekt Bayern, but instead, originated from the City.

57. As a direct consequence of the City's unlawful acts and practices, Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

58. By reason of the City's unlawful acts and practices, the City has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

COUNT VI

VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

(As to the Leavenworth Chamber of Commerce)

59. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

1 60. As result of its longstanding position as the exclusive provider of an
2 Oktoberfest celebration in Leavenworth, Projekt Bayern has acquired wide
3 recognition among attendees of cultural festivals.

4 61. Because of the highly entertaining and superb quality service Projekt
5 Bayern provides to those attending its LEAVENWORTH OKTOBERFEST event
6 year after year, consumers have come to associate the LEAVENWORTH
7 OKTOBERFEST event with Projekt Bayern.

8 62. As described above, the Chamber knowingly and willfully misled and
9 deceived consumers into believing that the 2022 Festival held in Leavenworth in
10 2022 had an affiliation, connection, or association with Projekt Bayern, or that the
11 2022 Festival was approved or sponsored by Projekt Bayern.

12 63. The Chamber's actions described above, including falsely and
13 misleadingly describing or representing in commercial advertising and promotion of
14 the Chamber's services as that of Projekt Bayern's, misrepresented the nature,
15 characteristics, and qualities of the Chamber's services.

16 64. For example, in a release dated July 11, 2022, Jessica Stroller, on behalf
17 of Leavenworth Chamber of Commerce, wrote that "Oktoberfest returns to
18 Leavenworth over three weekends," insinuating to consumers that Projekt Bayern's
19 LEAVENWORTH OKTOBERFEST event, which has been the only Oktoberfest
20 event taking place in the City of Leavenworth for the past 20 years, will be held in
21 Leavenworth again this year.

22 65. An advertisement for the 2022 Festival also stated that "Oktoberfest is
23 back," again, suggesting to consumers that Projekt Bayern's LEAVENWORTH
24 OKTOBERFEST event, which has been the only Oktoberfest event taking place in
25 the Leavenworth area for the past 20 years, will be held in Leavenworth again this
26 year.

66. Furthermore, the Chamber used photographs, depicting the LEAVENWORTH OKTOBERFEST event rendered by Projekt Bayern, to advertise the City and the Chamber's directly competing festival. The Chamber intentionally used the recognition and goodwill associated with Projekt Bayern and the Projekt Bayern Services, specifically its LEAVENWORTH OKTOBERFEST event, to launch its directly competing festival.

67. The Chamber's actions constitute unfair and deceptive practices in commerce under Washington law.

68. The Chamber's actions have and continue to negatively affect the public interest as consumers traveling from all around the United States were deceived into attending an event, of which they believed originated from, or was associated with, Projekt Bayern, but instead, originated from the Chamber.

69. As a direct consequence of the Chamber's unlawful acts and practices, Projekt Bayern has suffered, will continue to suffer and/or is likely to suffer damage to its business reputation and goodwill, for which Projekt Bayern is entitled to relief.

70. By reason of the Chamber's unlawful acts and practices, the Chamber has caused, is causing and, unless such acts are enjoined by the Court, will continue to cause irreparable harm to Projekt Bayern for which there is no adequate remedy at law and for which Projekt Bayern is entitled to injunctive relief.

COUNT VII

TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY

(As to the City of Leavenworth)

71. Projekt Bayern repeats, realleges, and incorporates all of the allegations made in the foregoing paragraphs of the Counterclaims as if fully set forth herein.

1 72. The Leavenworth Municipal Code (“LMC”), Title 5, Chapter 38,
2 governs who may be a “Festival Sponsoring Group” as well as requirements to
3 which the Festival Sponsoring Groups must adhere.

4 73. LMC 5.38.010(A) requires any Festival Sponsoring Group to be “a
5 nonprofit group with its home office located within the Cascade School District . . .
6 .”

7 74. On or about June 3, 2021, the City requested persons and/or entities to
8 apply for October 2022 event permits. Specifically, the City stated in its
9 advertisement for permit applications that “[t]he City is seeking a new style of
10 partnership with an entity that will conceptualize, plan, prepare, execute, evaluate
11 and replicate a marquee event to promote the City, showcase local businesses,
12 respect community character, celebrate inclusion, and balance the needs of visitors
13 and residents in October.” (Emphasis added).

14 75. Via the above press release, the City was seeking a single entity to be
15 the Festival Sponsoring Group for an Oktoberfest-style festival in Leavenworth in
16 October of 2022. The City set a deadline of 12:00 noon on August 3, 2021, to submit
17 applications for the October 2022 event permit.

18 76. Only Projekt Bayern and S.E. Productions, Inc. applied for the October
19 2022 event permit by the August 3, 2021, 12:00 noon deadline. The Leavenworth
20 Chamber of Commerce did not apply for the event permit before said deadline.

21 77. S.E. Productions is a for-profit corporation whose home office is in
22 King County, Washington. S.E. Productions has never had a home office in the City,
23 Chelan County, or the Cascade School District. S.E. Productions was not and is not
24 qualified to be a Festival Sponsoring Group because it does not meet the
25 requirements of LMC 5.38.010(A).

1 78. Projekt Bayern meets the requirements of LMC 5.38.010(A) to be a
2 Festival Sponsoring Group because (a) it is a non-profit organization; and (b) its
3 home office is located within the Cascade School District.

4 79. Projekt Bayern is the only entity that applied for the October 2022 event
5 permit by the August 3, 2021, deadline that satisfies the requirements of LMC
6 5.38.010(A). As such, Projekt Bayern was the only entity to whom the City could
7 have awarded the October 2022 event permit through the City's invitation for
8 applications.

9 80. The City awarded the October 2022 event permit to S.E. Productions
10 rather than to Projekt Bayern despite the fact that the City's own municipal code
11 prohibits S.E. Productions from being a Festival Sponsoring Group.

12 81. In place of its LEAVENWORTH OKTOBERFEST event, Projekt
13 Bayern rented the Leavenworth Festhalle for a harvest festival in 2021. Projekt
14 Bayern then reserved the Leavenworth Festhalle for the same time period in 2022 to
15 operate its LEAVENWORTH OKTOBERFEST event.

16 82. When Projekt Bayern reserved the Leavenworth Festhalle for 2022, the
17 Leavenworth Festhalle Facilities Policy entitled Projekt Bayern to reserve the
18 Leavenworth Festhalle for the same time period that Projekt Bayern had rented the
19 Leavenworth Festhalle during the prior year, i.e., 2021.

20 83. After Mayor Florea learned that Projekt Bayern had reserved
21 Leavenworth Festhalle for its LEAVENWORTH OKTOBERFEST in 2022, Mayor
22 Florea directed Leavenworth Festhalle to cancel Projekt Bayern's reservation in
23 violation of the Leavenworth Festhalle Facilities Policy.

24 84. Projekt Bayern had a reasonable business expectancy in operating its
25 LEAVENWORTH OKTOBERFERST in Leavenworth as it had in the past and
26 selling its services to the public. This expectancy included, without limitation,

1 selling its services to those who attended the 2022 Bavarian-themed festival that was
2 hosted, organized, and operated by the City and/or the Leavenworth Chamber of
3 Commerce, and ran concurrently with the 2022 LEAVENWORTH
4 OKTOBERFEST that Projekt Bayern organized and operated in Wenatchee,
5 Washington.

6 85. The City had knowledge of Projekt Bayern's business expectancy
7 because, among other things, the City knew that Projekt Bayern (a) had held Projekt
8 Bayern's LEAVENWORTH OKTOBERFEST in the City every year from 1998
9 through 2019, was planning to hold the LEAVENWORTH OKTOBERFEST in
10 2022, and did not hold the festival in 2020 and 2021 only because of COVID-19
11 restrictions; (b) had donated hundreds of thousands of dollars to the City, a
12 substantial portion of which was for capital improvements to enhance Projekt
13 Bayern's LEAVENWORTH OKTOBERFEST; and (c) submitted two applications
14 to the City in response to the City's request that entities apply for the October 2022
15 event permit.

16 86. The City intentionally interfered with and terminated Projekt Bayern's
17 business expectancy by selecting S.E. Productions as the entity to hold the October
18 2022 festival even though S.E. Productions does not meet the requirements of LMC
19 5.38.010(A).

20 87. The City's interference was wrongful because, in doing so, it violated
21 its own municipal code (LMC 5.38.010(A)) and its Leavenworth Festhalle Facilities
22 Policy.

23 88. The City's wrongful interference with Projekt Bayern's business
24 expectancy is both the actual and proximate cause of damage to Projekt Bayern and
25 its LEAVENWORTH OKTOBERFEST Mark in amounts to be determined at trial.

26 I. PRAYER FOR RELIEF

1 WHEREFORE, Defendant Projekt Bayern prays for relief as follows:

2 A. An order dismissing the City's Complaint against Projekt Bayern with
3 prejudice;

4 B. An order declaring that the trademark LEAVENWORTH
5 OKTOBERFEST is owned by Projekt Bayern;

6 C. An order preliminarily and permanently enjoining the City of
7 Leavenworth and the Leavenworth Chamber of Commerce from using
8 LEAVENWORTH OKTOBERFEST without authorization from Projekt Bayern or
9 claiming ownership of the LEAVENWORTH OKTOBERFEST trademark;

10 D. An order requiring an accounting of all gains, profits, and advantages
11 derived from the Leavenworth Chamber of Commerce's wrongful acts;

12 E. An award to Projekt Bayern for all gains, profits, and advantages
13 derived by the Leavenworth Chamber of Commerce for its unlawful acts;

14 F. An award to Projekt Bayern for all damages caused by the Leavenworth
15 Chamber of Commerce's unlawful acts;

16 G. An award to Projekt Bayern of all of its attorneys' fees and costs to the
17 extent permitted by law; and

18 H. For such other and further relief as this Court deems just and equitable.

19 **II. DEMAND FOR JURY TRIAL**

20 Projekt Bayern demands a jury trial.

21 //

22 //

23 //

24 //

25 //

26 //

1 DATED this 21st day of December, 2022.

2
3 s/ James Breitenbucher

4 James Breitenbucher, WSBA #27670
5 FOX ROTHSCHILD LLP
6 1001 Fourth Avenue, Suite 4400
7 Seattle, WA 98154
8 Tel 206.624.3600/Fax 206.389.1708
9 jbreitenbucher@foxrothschild.com

s/ Kelly Konkright

Kelly Konkright, WSBA #33544
LUKINS & ANNIS, P.S.
717 W. Sprague Avenue, Suite 1600
Spokane, Washington 99201
Tel 509.455.9555/Fax 509.747.2323
kkonkright@lukins.com

8 s/ Cali R. Spota

9 Cali R. Spota (admitted *pro hac vice*)
10 FOX ROTHSCHILD LLP
11 997 Lenox Drive
12 Lawrenceville, NJ 08648
13 Tel 609.896.3600/Fax 609.896.1469
14 cspota@foxrothschild.com

15 *Attorneys for Projekt Bayern Association*

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date written below, I caused a true and correct copy of the foregoing to be delivered to the following party in the manner indicated:

Name: Rhett V. Barney, WSBA #44764 ☒ Via Email/ECF
Johanna Tomlinson, WSBA #57582 ☐ Via U.S. Mail
Ethan B. Vodde, WSBA #55400
Address: LEE & HAYES, P.C. ☐ Via Overnight Courier
Address: 601 W. Riverside Avenue, Suite 1400 ☐ Via Facsimile
Address: Spokane, WA 99201 ☐ Via FedEx
Phone: (509) 324-9256
Fax: (509) 323-8979
Email: rhettb@leehayes.com
johanna.tomlinson@leehayes.com
ethan.vodde@leehayes.com

Name: Robert J. Carlson, WSBA #18455 ☒ Via Electronic Mail/ECF
Address: LEE & HAYES, P.C. ☐ Via U.S. Mail
Address: One Convention Place ☐ Via Overnight Courier
Address: 701 Pike Street, Suite 1600 ☐ Via Facsimile
Address: Seattle, WA 98101 ☐ Via FedEx
Phone: (206) 315-4001
Fax: (206) 315-4004
Email: bob@leehayes.com

*Attorneys for Plaintiff City of Leavenworth and
Third-Party Defendant Leavenworth Chamber of Commerce*

DATED this 21st day of December, 2022.



Mia Tenorino
Legal Assistant
Fox Rothschild LLP
mtenorino@foxrothschild.com